THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.949 OF 2002

Dated: 14-03-2006

Between :

Jetti Bhanu Prasad … Petitioner

And

Assistant Director of Fisheries,

Fisheries Department, Guntur. … Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.949 OF 2002

ORDER :

The respondent – Assistant Director of Fisheries, Guntur issued a notice dated 24-5-2001 proposing to conduct auction in respect of the leasehold rights of fishing in Thondapi Major Irrigation Tank, Muppalla Mandal, Guntur District. As per the conditions mentioned in the Tender Notice, the auction was scheduled to be held on 31-5-2001 and the highest bidder shall deposit 1/4th of the bid amount immediately. The remaining amount shall be paid by 2-6-2001 by 5.00 pm failing which the auction will be cancelled and the amount already deposited will be credited to the Government Treasury. It was also stipulated that the highest bidder has to the catch the fish by 30-06-2001 and that the time will not be extended under any circumstances.

It is not in dispute that the writ petitioner was the successful bidder in the auction having offered Rs.3,00,001/-. It is also not in dispute that the petitioner deposited a sum of Rs.75,001/- towards the 1/4th bid amount immediately after the auction. However, one of the unsuccessful bidders filed W.P.No.10646 of 2001 and this Court by order dated 1-6-2001 stayed the confirmation of auction. In view of the said order of stay, the payment of Rs.2,25,000/- made by the petitioner towards the balance of the bid amount was not accepted by the respondent. Subsequently, the petitioner got himself impleaded as a respondent to W.P.No.10646 of 2001 and at his instance by order dated 25-6-2001 the interim order was vacated. The petitioner states that even during the pendency of the said vacate petition, he made a representation dated 15-6-2001 requesting the respondent to cancel the auction and refund the amount already deposited by him stating that since the auction was not confirmed, he cannot complete the fishing operations by 30-06-2001. However, the respondent failed to respond, but, on the other hand, issued a notice dated 8-8-2001 calling upon the petitioner to pay the balance of Rs.2,25,000/- and catch the fish. The petitioner gave a reply dated 15-8-2001 stating that as the sale was not confirmed and he could not catch the fish before 30-06-2001 he is entitled for refund of the advance paid by him. Since there was no response, the petitioner filed this writ petition seeking a Mandamus declaring the action of the respondent in refusing to refund the amount of Rs.75,001/- deposited by the petitioner pursuant to the auction notice dated 24-5-2001 as arbitrary and illegal and consequently to refund

the said amount.

The respondent filed a counter-affidavit in which the facts that the petitioner was the highest bidder, that he deposited Rs.75,001/- towards 1/4th of the bid amount and that in view of the interim order in W.P.No.10646 of 2001 the auction could not be confirmed has not been disputed. However, it is stated that the representation of the petitioner dated 15-6-2001 was in fact submitted to the respondent only on 2-7-2001. It is also stated that in spite of the letter dated 8-8-2001 requesting the petitioner to catch the fish after depositing the remaining amount, he failed to do so, but requested to refund the 1/4th bid amount. It is also stated that in case the petitioner was not interested, he ought to have sought for refund of the amount deposited on 2-6-2001 itself and the present writ petition is misconceived and liable to be dismissed.

Having heard the learned Counsel for both the parties and having perused the material on record, it is clear that there was no default on the part of the petitioner to comply with the conditions of auction. Admittedly, he paid the 1/4th of the bid amount immediately after auction and he was also prepared to pay the balance within the time specified. Whereas, as per the auction conditions, the highest bidder was required to catch the fish in the tank before 30-06-2001, the stay of confirmation of auction granted in W.P.No.10646 of 2001 was vacated only on 25-6-2001. Thus, only five days were left for completing the fishing operations. Admittedly, the respondent neither extended the time nor forfeited the amount already deposited. In the circumstances, the respondent was not justified in withholding the 1/4th bid amount already deposited by the petitioner. The only objection raised by the respondent in the counter-affidavit is that the petitioner ought to have approached the Civil Court for recovery of the amount, but he cannot maintain this writ petition.

It is true that normally this Court, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, will not entertain any claim for money. However, this is a case where there is absolutely no dispute about the fact that the petitioner was the successful bidder and deposited the said amount of Rs.75,001/-.

The auction was also conducted in exercise of the statutory provisions in respect of the fishing rights in a Major Irrigation Tank. That apart, admittedly the petitioner was not in fault for non-confirmation of the auction. In the circumstances, I do not find any justifiable reason to relegate the petitioner to common law remedy.

Having regard to the facts and circumstances of the case which does not involve any disputed questions of fact and particularly since the respondent failed to make out any case to show that the petitioner is not entitled for refund of the amount, I deem it appropriate to dispose of the Writ Petition with a direction to the respondent to refund the amount of Rs.75,001/- as expeditiously as possible preferably within a period of six (6) weeks from the date of receipt of this order.

The Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 14–03-2006

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